IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION (LDG) NO.1666 OF 2007

Major Leena Gurav. ...Petitioner.
Vs.
Union of India & Ors. ...Respondents.

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Mr.Rajiv Chavan i/b. Ms.Rutuja Ambekar for for the Petitioner.
Mr.Rui Rodriques with Ms. Leena Patil for the Respondents.

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CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

August 14, 2007.

P.C. :

Vide order Signal No. 380539/MSIC, dated July 26, 2007 (Exhibit ' O to the Petition), the Petitioner was ordered to be transferred from Mumbai to Lucknow. She is a member of the Armed Forces belonging to COMMA JAG and is posted as Officer-in-Charge, Legal Cell of Headquarters, Maharashtra, Gujarat and Goa Area at Colaba, Mumbai. She questioned the correctness of the order of transfer on the basis that she is pregnant and is in the midst of ninth month of pregnancy and keeping in view her medical status, it was

neither equitable, nor just to post her outside Mumbai. It is also stated that her order of transfer does not conform to the rules and regulations as well as the convention. Travelling is stated to be injurious to her health and this in fact, is claimed to deprive the Petitioner of the protection granted to her in terms of Article 21 of the Constitution of India.

2. The Respondents contested the claim of the Petitioner and stated that the order of transfer has been passed as an incident of service. Even other officers have been transferred and the Respondents will take due care of the Petitioner. It is urged that the order of transfer was not arbitrary, nor contrary to settled norms of the Armed Services.

3. This matter came up for hearing before the Court on a number of occasions when Counsel appearing for the Respondents sought time to seek instructions. Thereafter, parties collectively sought time to see if they could resolve this issue without any

intervention or determination of the controversy by the Court.

4. When the case was taken up for hearing today, Counsel appearing for the Respondents tendered a draft order to be issued by the Headquarters, MG & G Area. The order proposed, which does not cancel the order of transfer of the Petitioner, but provides requisite relief for the time being, reads as under:

> "POSTING:WS-00197F MAJ LEENA GURAV, OIC
> LEGAL CELL
>
> 1. Ref this HQ letter No.401503/A3 dt 11 Aug 07 and hearing in Hon'ble High Court of Mumbai on 14 Aug 07.
>
> 2. The ibid letter after amendment may please be read as given in succeeding paras.
>
> 3. Integrated HQ of MoD (Army) has confirmed that on being relieved from the duties of 'Officer in Charge Legal Cell', you will be suitably managed in Mumbai till 15 Sep 07 after which you will be granted the following on leave cum posting :-
>
> (a) Sixty days of maternity leave.
>
> (b) Sixty days entitled Annual Leave for yr 2007.
>
> (c) Joining time to include preparatory leave of six days and entitled journey period from Mumbai

to Lucknow (excluding Sundays). In case, you desire to avail extended joining time, in accordance with Army Order 259/73, you may apply for the same.

4. On completion of the ibid leave, joining time and journey period, you will report to the office of Deputy Judge Advocate General, HQ Central Comd, Lucknow.

5. In case you desire to retain the Govt accommodation allotted to you at Mumbai during the period of ibid leaved and joining time, you may apply for the same and necessary sanction will be given. You may continue to draw your entitled rations at Mumbai during the said leave period."

5. Learned Counsel for the Petitioner, however, has certain reservations, particularly in the opening line of para 3 as well as clause 3(c). Seeking further instructions, Learned Counsel for the Respondents stated that the period stated under clause 3(c) would be 30 days inclusive of six days of preparatory leave. As far as the opening line of para 3 is concerned, it was stated that she would be posted out of Mumbai only on or after 15th September 2007 and till that time she will be retained at Mumbai. Her maternity leave will start from 15th September 2007. Counsel appearing on behalf of the

Petitioner submits that the order is acceptable to the Petitioner and does not press this petition any further. Keeping in view the stand taken by the Counsel for respective parties and in view of the order to be passed by the Respondents as clarified now, the petition has become infructuous and is disposed of as such, leaving the parties to bear their own costs.

CHIEF JUSTICE

Dr.D.Y. CHANDRACHUD, J.